

PT 02-62

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

AMERICAN BUSINESS CLUBS)		
SULLIVAN CHAPTER)		
Applicant)	Docket #	01-70-03
v.)		
)	A.H. Docket #	01-PT-0065
)	P. I. #	08-08-02-311-005
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Dean W. Jackson for American Business Clubs Sullivan Chapter; Mr. Kent Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

Synopsis:

The hearing in this matter was held to determine whether Moultrie County Parcel Index No. 08-08-02-311-005 qualified for exemption during the 2001 assessment year.

Mr. Robert Hagen, prior officer of American Business Clubs Sullivan Chapter, (hereinafter referred to as the "Applicant") was present and testified on behalf of applicant.

The issues in this matter include, first, whether applicant was the owner of the parcel during the 2001 assessment year; secondly, whether applicant is an exempt organization; and lastly, whether the parcel was used by applicant for exempt purposes during the 2001 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the exemption be denied. In support thereof, I make the following findings and conclusions in

accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

FINDINGS OF FACT:

1. The jurisdiction and position of the Department that Moultrie County Parcel Index No. 08-08-02-311-005 did not qualify for a property tax exemption for the 2001 assessment year were established by the admission into evidence of Dept. Ex. No. 1. (Tr. p. 11)

2. The Department received the request for exemption of Moultrie County Parcel Index No. 08-08-02-311-005 for the 2001 assessment year. The Board of Review of Moultrie recommended granting the exemption. The Department denied the requested exemption finding that the property was not in exempt ownership and not in exempt use. The applicant timely protested the denial and requested a hearing. The hearing was held pursuant to that request. (Dept. Ex. No. 1)

3. As a bona fide subsidiary of National AMBUCS, Inc., applicant is exempt from the payment of federal income tax pursuant to a finding by the Internal Revenue Service that it qualifies as a 501(c)(3) charitable organization under the Internal Revenue Code. (Dept. Ex. No. 1; Tr. p. 16)

4. The purpose for which the applicant is organized, according to the national bylaws is:

To quicken the appreciation of the human and spiritual, rather than the material values of life; to develop by precept and example a more intelligent, aggressive and serviceable citizenship; to provide through member chapters the rendering of altruistic service, and the wholesome upbuilding of communities; to cooperate and collaborate with other civic bodies in the development and maintenance of high civic idealism and consciousness; to operate exclusively for charitable, religious, scientific, literary or educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954. (Applicant's Ex. R2)

5. The national purpose is carried through the standard district and chapter bylaws. (Applicant's Ex. R3, R4)

6. Applicant was unable to locate an executed and ratified copy of its bylaws or articles of incorporation. However, the applicant adopted the standard chapter bylaws, which purposes are identical to those set forth in the National AMBUCS bylaws. (Tr. pp. 22-23)

7. Applicant is a business organization. However, its membership is not necessarily composed strictly of businessmen. (Tr. p. 58)

8. Applicant collaborates with other organizations in the community to sponsor projects that address the needs of the community. (Tr. pp. 56-57)

9. A potential member must apply to become a member of applicant and be sponsored by a member in good standing. A general consensus of applicant's members is needed to accept a new member. Applicant actively seeks new members. (Applicant's Ex. R4; Tr. pp. 65-68)

10. Applicant's five types of membership include Active, Inactive, Friends, Life, and National. All types of membership have fee or contribution requirements. (Applicant's Ex. R2-R4)

11. Applicant's monthly financial report for December 2001 shows dues received in the amount of \$2,597.00, conventions account for \$1,569.30, and living end/stag is \$1,070.05¹. (Applicant's Ex. R8)

12. Applicant submitted a sheet entitled "2001 Financials". The sheet shows the 1-2001 balance of \$3,915.39; income of \$9,801.46; expenses of \$10,509.99; and the 1-31-01² balance of \$3,206.86. Expenses included \$5,350.17 for building costs, including taxes, and

¹ The amounts for conventions and living end/stag were not explained.

² It is assumed this date should be 12-31-01.

donations of \$2,900.25³. The donations page shows for 2001: scholarships-\$1,000; Pearl Fund-\$100; Easter Seals-\$1,200; Angie Reed Benefit-\$50; regular AMBUCS-\$150; Lions Club-\$25; Interagency-\$50; and DARE-\$325.25. Of the income amount in 2001, \$2,410 is from people paying rent to use the building. (Applicant's Ex. R8; Tr. pp. 42-46)

13. In 2001, applicant also donated three AmTrykes⁴ to local children that needed them. The Trykes cost \$1,246, which was paid in March 2002. (Applicant's Ex. R7; Tr. p. 41)

14. Applicant acquired the subject parcel by a warranty deed dated December 30, 1969. Located on the real estate is a 1680 square foot one-story building. (Dept. Ex. No. 1)

15. The building contains a large meeting room with a kitchen in the back. (Dept. Ex. No. 1; Tr. pp. 24-25)

16. Applicant conducts its regular monthly board meetings and bi-monthly evening meetings in the building on the subject property. The evening meetings begin with a meal prepared by club members. The pledge of allegiance commences the business part of the meeting, followed by a prayer, the minutes of the last meeting, the financial report, a speaker⁵, new and old business⁶, and adjournment. (Applicant's Ex. R8; Tr. pp. 63-65)

17. Other organizations also use the building including the Boy Scouts, Girl Scouts, Weight Watchers, Lions Club, Ducks Unlimited, Optimist Club, and Little League. Applicant also rents the building to local organizations, and to individuals for funeral dinners, family events, and weddings. Weight watchers pays applicant \$100.00 per month for the weekly

³ This totals \$8,250.42 of the given total expense amount of \$10,509.99. Applicant's financial statements were neither audited nor complete.

⁴ An AmTryke is a therapeutic tricycle manufactured by the National AMBUCS and designed specifically for children with disabilities. (Tr. p. 31)

⁵ The speakers in 2001 included representatives requesting donations and providing information about 911, a new jail for the sheriff, elder abuse, the local basketball season, a boy scout cabin upgrade, autistic twins, the local football season, DARE, county taxes, the sheriff's election, and district AMBUCS. (Applicant's Ex. R6; Tr. pp. 60-63)

⁶ During the discussion of old business and new business, applicant talks about raising funds and distributing those funds. (Tr. p. 43)

meetings it conducts in the building. (Dept. Ex. No. 1; Applicant's Ex. R5, R6; Tr. pp. 37-40, 68-69)

CONCLUSIONS OF LAW:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944) Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.

Here, the appropriate exemption applies to “institutions of public charity.” Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an “institution of public charity” and “exclusively used” for purposes which qualify as “charitable” within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter “Methodist Old Peoples Home”). They have also ascribed to the following definition of “charity”, originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all “institutions of public charity” share the following “distinctive characteristics”:

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,
- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and

- 6) the term “exclusively used” means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Although the criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula, they are guidelines that help to analyze whether an applicant is a charitable organization. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2nd Dist. 1995) *leave to appeal denied* (164 Ill.2d 561)

Applicant’s name indicates that it is a business club. Its bylaws state applicant will cooperate and collaborate with other civic bodies in the development and maintenance of high civic idealism and consciousness. The club has five types of membership. Each type of membership requires payments of fees or contributions. There was no evidence or testimony provided that those fees were ever waived if an individual wishes to become a member of applicant, but can not afford the dues.

According to applicant’s bylaws, members must be individuals of good community standing and a person cannot become a member unless sponsored by another member in good standing. Applicant, like other member organizations such as the Rotary, Kiwanis, Veteran’s groups, and Masonic organizations dispenses money to a number of worthwhile organizations within the community. However, member organizations such as Masonic lodges and temples⁷ and veteran’s property⁸ normally do not qualify for property tax exemptions because the groups are member organizations, have limitations on that membership, and require payment of dues. In addition, Illinois courts have held that the predominant use of the property of those organizations is not charitable. In addition applicant’s expenses were not for charitable donations but rather to national organizations, building costs, and scholarships.

⁷ Pontiac Lodge No. 294, A.F. & A.M. v. Department of Revenue, 243 Ill.App.3d 186 (4th Dist. 1993), and People v. Dixon Masonic Bldg. Ass’n, 348 Ill. 593 (1932),

⁸ North Shore Post No. 21 v. Korzen, 38 Ill.2d 231 (1967) and Rogers Park Post No. 108, American Legion v.

Applicant in its old and new business discussions at its bi-monthly meetings, talks about ways to raise money for the community. Applicant has speakers who request donations and apprise applicant of needs within the community. There is nothing of record to show what standards, if any, applicant has established for use of its funds. Just as applicant has limitations on its membership, applicant has also not shown that it dispenses charity to all who need and apply for it.

Applicant submitted a monthly financial report for December 2001 that showed the major source of income was from dues, in the amount of \$2,597.00. Conventions accounted for \$1,569.30, living end/stag was \$1,070.05, and rental income was \$2,410. Applicant has not established that those sources of the income are from public and private charity as suggested by the guidelines.

Applicant holds its meetings in the building on the subject property. Other organizations also use the building including other civic organizations and a for-profit business. Applicant charges some entities fees for the use of the building. While Illinois courts have held that charging fees to a person who has the ability to pay will not destroy a charitable exemption, Small v. Pangle, 60 Ill.2d 510 (1975), charging fees does not establish a charitable organization or charitable use of property. There is nothing in the record that establishes what, if any, criteria applicant has set for allowing other entities use of the premises, and whether it allows use in a statutorily charitable manner.

Brenza, 8 Ill.2d 286 (1956)

I therefore find that applicant has not established it is a charitable organization using the property for charitable purposes. It is recommended that Moultrie County Parcel Index No. 08-08-02-311-005 remain on the tax rolls for the 2001 assessment year.

Respectfully Submitted,

Date: December 6, 2002

Barbara S. Rowe
Administrative Law Judge